

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SAVETSKY, individually and) Case No. 14-03514 SC
on behalf of all others similarly)
situated,) ORDER RE: SUPPLEMENTAL
) BRIEFING

Plaintiff,) _____

v.)

PRE-PAID LEGAL SERVICES, INC.
d/b/a LegalShield,

Defendant)

20 Now before the Court is Defendant LegalShield's¹ motion to
21 compel Plaintiff Michael Savetsky to arbitrate his claims in this
22 putative consumer class action. ECF Nos. 40 ("Mot."). The motion
23 is now fully briefed, ECF Nos. 53 ("Opp'n"), 57 ("Reply"), however,
24 because the parties have overlooked an important issue, the Court
25 hereby ORDERS supplemental briefing.

26 || //

27 ¹ Defendant is actually named Pre-Paid Legal Services, Inc., but
28 does business as LegalShield. For simplicity the Court will refer
to Defendant as LegalShield.

1 The Court previously denied a motion to compel arbitration
2 under LegalShield's membership agreement, finding that Savetsky
3 never assented to the arbitration provision contained in that
4 agreement. ECF No. 33 ("Prior Order") at 14. After the Court
5 denied that motion, LegalShield discovered that even prior to
6 becoming a member, Savetsky signed up to sell LegalShield
7 memberships as a "sales associate." In becoming a sales associate,
8 LegalShield contends Savetsky entered into an "associate agreement"
9 containing a separate and enforceable arbitration provision. See
10 Pinson Decl. Ex. A ("Associate Agreement") at 6.

11 The parties devote much of their briefing to the question of
12 whether the Associate Agreement is unconscionable as a matter of
13 California law. See Mot. at 19-21; Opp'n at 14-25; Reply at 7-13.
14 Elsewhere in their submissions, the parties also rely on other
15 points of California contract law. See, e.g., Mot. at 16-19
16 (arguing assent, fraud, and duress with reliance on California
17 law); Opp'n at 9-10 (discussing the application of the California
18 parol evidence rule). Yet the parties apparently overlooked the
19 very first line of the arbitration clause that is at the heart of
20 this motion, which states that "[t]he Associate Agreement and
21 Policies and Procedures," which contain the arbitration provision,
22 "will be governed by and construed in accordance with the laws of
23 the State of Oklahoma." ECF No. 42 ("Pinson Decl.") at 6, ¶ 23
24 (emphasis added).

25 Accordingly, the Court hereby ORDERS the parties to submit
26 supplemental briefs regarding the choice of law clause, its
27 enforceability, and its applicability to this motion. Briefing
28 shall take place according to the following schedule:

1 • No later than Friday, June 5, 2015, LegalShield shall
2 file an opening brief of no more than ten (10) pages
3 confined to these issues.

4 • No later than Friday, June 12, 2015, Savetsky shall file
5 a responsive brief of no more than ten (10) pages
6 confined to these issues.

7 • No later than Friday, June 19, 2015, LegalShield may file
8 a reply of no more than five (5) pages confined to the
9 issues raised in its opening and Savetsky's responsive
10 briefs.

11 • The hearing currently set for May 29, 2015 is hereby
12 VACATED, and the Court instead sets a hearing for Friday,
13 June 26, 2015 at 10:00 AM in Courtroom 1, 17th Floor, San
14 Francisco Court House.

15

16 IT IS SO ORDERED.

17
18 Dated: May 22, 2015


UNITED STATES DISTRICT JUDGE